

HOUSE BILL No. 1135

DIGEST OF INTRODUCED BILL

Citations Affected: IC 3-7-32-1; IC 3-11; IC 3-14-2-16; IC 12-10; IC 16-36; IC 29-1; IC 29-3; IC 30-2-13-9; IC 30-5 IC 30-6; IC 34-30-2-132.8; IC 35-42-1-2.5.

Synopsis: Uniform power of attorney act. Enacts the uniform power of attorney act at IC 30-6. Repeals IC 30-5 concerning powers of attorney. Makes conforming changes.

Effective: July 1, 2008.

Foley

January 8, 2008, read first time and referred to Committee on Judiciary.



Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

HOUSE BILL No. 1135

A BILL FOR AN ACT to amend the Indiana Code concerning probate.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 3-7-32-1, AS AMENDED BY P.L.81-2005,
2 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2008]: Sec. 1. (a) Each voter shall execute an original
4 registration form.

5 (b) An applicant's original registration form may not be signed by
6 a person acting for the applicant under ~~IC 30-5-5-14~~. **IC 30-6-4-17**.

7 SECTION 2. IC 3-11-4-21, AS AMENDED BY P.L.103-2005,
8 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 2008]: Sec. 21. (a) On the other side of the envelope required
10 by section 20 of this chapter shall be printed an affidavit in conformity
11 with 42 U.S.C. 1973ff-1(b), providing that the voter affirms under
12 penalty of perjury that the following information is true:

13 (1) The name of the precinct and township (or ward and city or
14 town).

15 (2) That the voter is:

16 (A) a resident of; or

17 (B) entitled under IC 3-10-11 or IC 3-10-12 to vote in;



the precinct.

(3) The voter's complete residence address, including the name of the city or town and county.

(4) That the voter is entitled to vote in the precinct, the type of election to be held, and the date of the election.

(5) That:

(A) the voter has personally marked the enclosed ballot or ballots in secret and has enclosed them in this envelope and sealed them without exhibiting them to any other person;

(B) the voter personally marked the enclosed ballot or ballots, enclosed them in this envelope, and sealed them with the assistance of an individual whose name is listed on the envelope and who affirms under penalty of perjury that the voter was not coerced or improperly influenced by the individual assisting the voter or any other person, in a manner prohibited by state or federal law, to cast the ballot for or against any candidate, political party, or public question; or

(C) as the properly authorized ~~attorney in fact~~ **agent** for the undersigned under ~~IC 30-5-5-14~~, **IC 30-6-4-17**, the ~~attorney in fact~~ **agent** affirms the voter personally marked the enclosed ballot or ballots in secret and enclosed them in this envelope and sealed them without exhibiting them to the ~~attorney in fact~~ **agent** or to any other person.

(6) The date and the voter's signature.

(b) If the affidavit is signed by an ~~attorney in fact~~, **agent**, the name of the ~~attorney in fact~~ **agent** must be indicated.

(c) A guardian or conservator of an individual may not sign an affidavit for the individual under this section unless the guardian or conservator also holds a power of attorney authorizing the guardian or conservator to sign the affidavit.

(d) The side of the envelope containing this affidavit must also set forth the penalties for perjury.

SECTION 3. IC 3-11-10-1, AS AMENDED BY P.L.198-2005, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. (a) A voter voting by absentee ballot shall make and subscribe to the affidavit prescribed by IC 3-11-4-21. The voter then shall, except as provided in subsection (b), do the following:

(1) Mark the ballot in the presence of no other person.

(2) Fold each ballot separately.

(3) Fold each ballot so as to conceal the marking.

(4) Enclose each ballot, with the seal and signature of the circuit court clerk on the outside, together with any unused ballot, in the



envelope provided.

(5) Securely seal the envelope.

(6) Do one (1) of the following:

(A) Mail the envelope to the county election board, with not more than one (1) ballot per envelope.

(B) Deliver the envelope to the county election board in person.

(C) Deliver the envelope to a member of the voter's household or a person designated as the ~~attorney in fact~~ **agent** for the voter under ~~IC 30-5~~ **IC 30-6** for delivery to the county election board:

(i) in person;

(ii) by United States mail; or

(iii) by a bonded courier company.

(b) A voter permitted to transmit the voter's absentee ballots by fax or electronic mail under IC 3-11-4-6 is not required to comply with subsection (a). The individual designated by the circuit court clerk to receive absentee ballots transmitted by fax or electronic mail shall do the following upon receipt of an absentee ballot transmitted by fax:

(1) Note the receipt of the absentee ballot in the records of the circuit court clerk as other absentee ballots received by the circuit court clerk are noted.

(2) Fold each ballot received from the voter separately so as to conceal the marking.

(3) Enclose each ballot in a blank absentee ballot envelope.

(4) Securely seal the envelope.

(5) Mark on the envelope: "Absentee Ballot Received by Fax or Electronic Mail".

(6) Securely attach to the envelope the faxed affidavit received with the voter's absentee ballots.

(c) Except as otherwise provided in this title, absentee ballots received by fax or electronic mail shall be handled and processed as other absentee ballots received by the circuit court clerk are handled and processed.

SECTION 4. IC 3-11-10-17, AS AMENDED BY P.L.198-2005, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 17. (a) If the inspector finds under section 15 of this chapter that any of the following applies, a ballot may not be accepted or counted:

(1) The affidavit is insufficient or the ballot has not been endorsed with the initials of:

(A) the two (2) members of the absentee voter board in the



- 1 office of the circuit court clerk under IC 3-11-4-19 or section
- 2 27 of this chapter;
- 3 (B) the two (2) members of the absentee voter board visiting
- 4 the voter under section 25(b) of the chapter; or
- 5 (C) the two (2) appointed members of the county election
- 6 board or their designated representatives under IC 3-11-4-19.
- 7 (2) A copy of the voter's signature has been furnished to the
- 8 precinct election board and that the signatures do not correspond
- 9 or there is no signature.
- 10 (3) The absentee voter is not a qualified voter in the precinct.
- 11 (4) The absentee voter has voted in person at the election.
- 12 (5) The absentee voter has not registered.
- 13 (6) The ballot is open or has been opened and resealed. This
- 14 subdivision does not permit an absentee ballot transmitted by fax
- 15 or electronic mail under IC 3-11-4-6 to be rejected because the
- 16 ballot was sealed in the absentee ballot envelope by the individual
- 17 designated by the circuit court to receive absentee ballots
- 18 transmitted by fax or electronic mail.
- 19 (7) The ballot envelope contains more than one (1) ballot of any
- 20 kind for the same office or public question.
- 21 (8) In case of a primary election, if the absentee voter has not
- 22 previously voted, the voter failed to execute the proper
- 23 declaration relative to age and qualifications and the political
- 24 party with which the voter intends to affiliate.
- 25 (9) The ballot has been challenged and not supported.
- 26 (b) Subsection (c) applies whenever a voter with a disability is
- 27 unable to make a signature:
- 28 (1) on an absentee ballot application that corresponds to the
- 29 voter's signature in the records of the county voter registration
- 30 office; or
- 31 (2) on an absentee ballot secrecy envelope that corresponds with
- 32 the voter's signature:
- 33 (A) in the records of the county voter registration office; or
- 34 (B) on the absentee ballot application.
- 35 (c) The voter may request that the voter's signature or mark be
- 36 attested to by:
- 37 (1) the absentee voter board under section 25(b) of this chapter;
- 38 (2) a member of the voter's household; or
- 39 (3) an individual serving as **attorney in fact agent** for the voter.
- 40 (d) An attestation under subsection (c) provides an adequate basis
- 41 for an inspector to determine that a signature or mark complies with
- 42 subsection (a)(2).



SECTION 5. IC 3-11-10-24, AS AMENDED BY P.L.103-2005,
SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 2008]: Sec. 24. (a) Except as provided in subsection (b), a
voter who satisfies any of the following is entitled to vote by mail:

(1) The voter has a specific, reasonable expectation of being
absent from the county on election day during the entire twelve
(12) hours that the polls are open.

(2) The voter will be absent from the precinct of the voter's
residence on election day because of service as:

(A) a precinct election officer under IC 3-6-6;

(B) a watcher under IC 3-6-8, IC 3-6-9, or IC 3-6-10;

(C) a challenger or pollbook holder under IC 3-6-7; or

(D) a person employed by an election board to administer the
election for which the absentee ballot is requested.

(3) The voter will be confined on election day to the voter's
residence, to a health care facility, or to a hospital because of an
illness or injury during the entire twelve (12) hours that the polls
are open.

(4) The voter is a voter with disabilities.

(5) The voter is an elderly voter.

(6) The voter is prevented from voting due to the voter's care of
an individual confined to a private residence because of illness or
injury during the entire twelve (12) hours that the polls are open.

(7) The voter is scheduled to work at the person's regular place of
employment during the entire twelve (12) hours that the polls are
open.

(8) The voter is eligible to vote under IC 3-10-11 or IC 3-10-12.

(9) The voter is prevented from voting due to observance of a
religious discipline or religious holiday during the entire twelve
(12) hours that the polls are open.

(10) The voter is an address confidentiality program participant
(as defined in IC 5-26.5-1-6).

(b) A voter with disabilities who:

(1) is unable to make a voting mark on the ballot or sign the
absentee ballot secrecy envelope; and

(2) requests that the absentee ballot be delivered to an address
within Indiana;

must vote before an absentee voter board under section 25(b) of this
chapter.

(c) If a voter receives an absentee ballot by mail, the voter shall
personally mark the ballot in secret and seal the marked ballot inside
the envelope provided by the county election board for that purpose.



- 1 The voter shall:
- 2 (1) deposit the sealed envelope in the United States mail for
- 3 delivery to the county election board; or
- 4 (2) authorize a member of the voter's household or the individual
- 5 designated as the voter's **attorney in fact agent** to:
- 6 (A) deposit the sealed envelope in the United States mail; or
- 7 (B) deliver the sealed envelope in person to the county
- 8 election board.
- 9 (d) If a member of the voter's household or the voter's **attorney in**
- 10 **fact agent** delivers the sealed envelope containing a voter's absentee
- 11 ballot to the county election board, the individual delivering the ballot
- 12 shall complete an affidavit in a form prescribed by the commission.
- 13 The affidavit must contain the following information:
- 14 (1) The name and residence address of the voter whose absentee
- 15 ballot is being delivered.
- 16 (2) A statement of the full name, residence and mailing address,
- 17 and daytime and evening telephone numbers (if any) of the
- 18 individual delivering the absentee ballot.
- 19 (3) A statement indicating whether the individual delivering the
- 20 absentee ballot is a member of the voter's household or is the
- 21 **attorney in fact agent** for the voter. If the individual is the
- 22 **attorney in fact agent** for the voter, the individual must attach a
- 23 copy of the power of attorney for the voter, unless a copy of this
- 24 document has already been filed with the county election board.
- 25 (4) The date and location at which the absentee ballot was
- 26 delivered by the voter to the individual delivering the ballot to the
- 27 county election board.
- 28 (5) A statement that the individual delivering the absentee ballot
- 29 has complied with Indiana laws governing absentee ballots.
- 30 (6) A statement that the individual delivering the absentee ballot
- 31 is executing the affidavit under the penalties of perjury.
- 32 (7) A statement setting forth the penalties for perjury.
- 33 (e) The county election board shall record the date and time that the
- 34 affidavit under subsection (d) was filed with the board.
- 35 (f) After a voter has mailed or delivered an absentee ballot to the
- 36 office of the circuit court clerk, the voter may not recast a ballot, except
- 37 as provided in:
- 38 (1) section 1.5 of this chapter; or
- 39 (2) section 33 of this chapter.
- 40 SECTION 6. IC 3-14-2-16, AS AMENDED BY P.L.103-2005,
- 41 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 42 JULY 1, 2008]: Sec. 16. A person who knowingly does any of the



following commits a Class D felony:

- (1) Applies for or receives a ballot in a precinct other than that precinct in which the person is entitled to vote.
- (2) Except when receiving assistance under IC 3-11-9, shows a ballot after it is marked to another person in such a way as to reveal the contents of it or the name of a candidate for whom the person has voted.
- (3) Except when offering assistance requested by a voter in accordance with IC 3-11-9, examines a ballot that a voter has prepared for voting or solicits the voter to show the ballot.
- (4) Receives from a voter a ballot prepared by the voter for voting, except:
 - (A) the inspector;
 - (B) a member of the precinct election board temporarily acting for the inspector;
 - (C) a member or an employee of a county election board (acting under the authority of the board and state law) or an absentee voter board member acting under IC 3-11-10; or
 - (D) a member of the voter's household, an individual designated as **attorney in fact agent** for the voter, or an employee of:
 - (i) the United States Postal Service; or
 - (ii) a bonded courier company;
 (acting in the individual's capacity as an employee of the United States Postal Service or a bonded courier company) when delivering an envelope containing an absentee ballot under IC 3-11-10-1.
- (5) Receives a ballot from a person other than one of the poll clerks or authorized assistant poll clerks.
- (6) Delivers a ballot to a voter to be voted, unless the person is:
 - (A) a poll clerk or authorized assistant poll clerk; or
 - (B) a member of a county election board or an absentee voter board acting under IC 3-11-10.
- (7) Delivers a ballot (other than an absentee ballot) to an inspector that is not the ballot the voter receives from the poll clerk or assistant poll clerk.
- (8) Delivers an absentee ballot to a team of absentee ballot counters appointed under IC 3-11.5-4-22, a county election board, a circuit court clerk, or an absentee voting board under IC 3-11-10 that is not the ballot cast by the absentee voter.
- (9) Delivers an absentee ballot prepared by the voter for voting to a county election board, except for:



- 1 (A) the inspector;
- 2 (B) a member of the precinct election board temporarily acting
- 3 for the inspector;
- 4 (C) a member or an employee of a county election board
- 5 (acting under the authority of the board and in accordance with
- 6 state law) or an absentee voter board member acting under
- 7 IC 3-11-10; or
- 8 (D) a member of the voter's household or an individual
- 9 designated as attorney in fact for the voter, an employee of:
- 10 (i) the United States Postal Service; or
- 11 (ii) a bonded courier company;
- 12 (acting in the individual's capacity as an employee of the
- 13 United States Postal Service or a bonded courier company)
- 14 when delivering an envelope containing an absentee ballot
- 15 under IC 3-11-10-1.
- 16 (10) Possesses an unmarked absentee ballot on or before the date
- 17 of the election for which the absentee ballot has been printed,
- 18 unless the person is authorized to possess the absentee ballot
- 19 under this title as any of the following:
- 20 (A) A printer, when arranging for the delivery of unmarked
- 21 absentee ballots to a county election board under IC 3-11-2.
- 22 (B) A county election board member or employee (acting
- 23 under the authority of the board and in accordance with state
- 24 law).
- 25 (C) An absentee voter board member.
- 26 (D) An employee of:
- 27 (i) the United States Postal Service; or
- 28 (ii) a bonded courier company;
- 29 (acting in the individual's capacity as an employee of the
- 30 United States Postal Service or a bonded courier company)
- 31 when delivering an envelope containing an absentee ballot.
- 32 (E) An individual authorized under IC 3-11-10-24 to deliver
- 33 an absentee ballot.
- 34 (F) An absentee ballot counter under IC 3-11.5.
- 35 (G) A provisional ballot counter.
- 36 (H) A precinct election officer.
- 37 (I) The voter who applied for the absentee ballot.
- 38 (11) Completes or signs an absentee ballot application for a voter,
- 39 or assists a voter in completing an absentee ballot application in
- 40 violation of IC 3-11.

41 SECTION 7. IC 12-10-7-8 IS AMENDED TO READ AS
42 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. (a) The division shall



contract in writing for the provision of the guardianship services required in each region with a nonprofit corporation that is:

- (1) qualified to receive tax deductible contributions under Section 170 of the Internal Revenue Code; and
- (2) located in the region.

(b) The division shall establish qualifications to determine eligible providers in each region.

(c) Each contract between the division and a provider must specify a method for the following:

(1) The establishment of a guardianship committee within the provider, serving under the provider's board of directors.

(2) The provision of money and services by the provider in an amount equal to at least twenty-five percent (25%) of the total amount of the contract and the provision by the division of the remaining amount of the contract. The division shall establish guidelines to determine the value of services provided under this subdivision.

(3) The establishment of procedures to avoid a conflict of interest for the provider in providing necessary services to each incapacitated individual.

(4) The identification and evaluation of indigent adults in need of guardianship services.

(5) The adoption of individualized service plans to provide the least restrictive type of guardianship or related services for each incapacitated individual, including the following:

(A) Designation as a representative payee by:

- (i) the Social Security Administration;
- (ii) the United States Office of Personnel Management;
- (iii) the United States Department of Veterans Affairs; or
- (iv) the United States Railroad Retirement Board.

(B) Limited guardianship under IC 29-3.

(C) Guardianship of the person or estate under IC 29-3.

(D) The appointment of:

- (i) a health care representative under IC 16-36-1-7; or
- (ii) a power of attorney under ~~IC 30-5~~ **IC 30-6**.

(6) The periodic reassessment of each incapacitated individual.

(7) The provision of legal services necessary for the guardianship.

(8) The training and supervision of paid and volunteer staff.

(9) The establishment of other procedures and programs required by the division.

SECTION 8. IC 12-10-13-3.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3.3. As used in this



chapter, "legal representative" means:

- (1) a guardian;
- (2) a health care representative acting under IC 16-36-1;
- ~~(3) an attorney-in-fact for health care appointed under IC 30-5-5-16;~~
- ~~(4) (3) an attorney-in-fact agent appointed under IC 30-5-5-16;~~
- ~~(5) (4) the personal representative of the estate;~~

of a resident of a long term facility or client of home care services.

SECTION 9. IC 16-36-1-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 14. ~~(a) The health care consent provisions under IC 30-5 are incorporated by reference into this chapter to the extent the provisions under IC 30-5 do not conflict with explicit requirements under this chapter.~~

~~(b)~~ With respect to the written appointment of a health care representative under section 7 of this chapter, whenever the appointment authorizes health care to be withdrawn or withheld from an individual with a terminal condition (as defined in IC 16-36-4-5), the following language in ~~IC 30-5-5-17~~ must be included in the appointment in substantially the same form:

"I authorize my health care representative to make decisions in my best interest concerning withdrawal or withholding of health care. If at any time based on my previously expressed preferences and the diagnosis and prognosis my health care representative is satisfied that certain health care is not or would not be beneficial or that such health care is or would be excessively burdensome, then my health care representative may express my will that such health care be withheld or withdrawn and may consent on my behalf that any or all health care be discontinued or not instituted, even if death may result.

My health care representative must try to discuss this decision with me. However, if I am unable to communicate, my health care representative may make such a decision for me, after consultation with my physician or physicians and other relevant health care givers. To the extent appropriate, my health care representative may also discuss this decision with my family and others to the extent they are available."

Nothing in this section may be construed to authorize euthanasia.

SECTION 10. IC 16-36-1.5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. (a) This section applies to a patient who:



(1) receives mental health services; and

(2) is mentally incompetent.

(b) A patient described in subsection (a) shall provide consent for mental health treatment through the informed consent of one (1) of the following:

(1) The patient's legal guardian or other court appointed representative.

(2) The patient's health care representative under IC 16-36-1.

~~(3) An attorney in fact for health care appointed under IC 30-5-5-16.~~

~~(4)~~ (3) The patient's health care representative acting in accordance with the patient's psychiatric advance directive as expressed in a psychiatric advance directive executed under IC 16-36-1.7.

SECTION 11. IC 16-36-4-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 10. The following is the living will declaration form:

LIVING WILL DECLARATION

Declaration made this _____ day of _____ (month, year). I, _____, being at least eighteen (18) years of age and of sound mind, willfully and voluntarily make known my desires that my dying shall not be artificially prolonged under the circumstances set forth below, and I declare:

If at any time my attending physician certifies in writing that: (1) I have an incurable injury, disease, or illness; (2) my death will occur within a short time; and (3) the use of life prolonging procedures would serve only to artificially prolong the dying process, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally with only the performance or provision of any medical procedure or medication necessary to provide me with comfort care or to alleviate pain, and, if I have so indicated below, the provision of artificially supplied nutrition and hydration. (Indicate your choice by initialling or making your mark before signing this declaration):

_____ I wish to receive artificially supplied nutrition and hydration, even if the effort to sustain life is futile or excessively burdensome to me.

_____ I do not wish to receive artificially supplied nutrition and hydration, if the effort to sustain life is futile or excessively burdensome to me.

_____ I intentionally make no decision concerning artificially supplied nutrition and hydration, leaving the decision to my health care representative appointed under IC 16-36-1-7. ~~or~~



1 ~~my attorney in fact with health care powers under IC 30-5-5.~~

2 In the absence of my ability to give directions regarding the use of
3 life prolonging procedures, it is my intention that this declaration be
4 honored by my family and physician as the final expression of my legal
5 right to refuse medical or surgical treatment and accept the
6 consequences of the refusal.

7 I understand the full import of this declaration.

8 Signed _____

9 _____
10 City, County, and State of Residence

11 The declarant has been personally known to me, and I believe
12 (him/her) to be of sound mind. I did not sign the declarant's signature
13 above for or at the direction of the declarant. I am not a parent, spouse,
14 or child of the declarant. I am not entitled to any part of the declarant's
15 estate or directly financially responsible for the declarant's medical
16 care. I am competent and at least eighteen (18) years of age.

17 Witness _____ Date _____

18 Witness _____ Date _____

19 SECTION 12. IC 16-36-5-9 IS AMENDED TO READ AS
20 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 9. As used in this
21 chapter, "representative" means a person's:

22 (1) legal guardian or other court appointed representative
23 responsible for making health care decisions for the person; **or**

24 (2) health care representative under IC 16-36-1. **or**

25 ~~(3) attorney in fact for health care appointed under IC 30-5-5-16.~~

26 SECTION 13. IC 29-1-3-4, AS AMENDED BY P.L.246-2005,
27 SECTION 213, IS AMENDED TO READ AS FOLLOWS
28 [EFFECTIVE JULY 1, 2008]: Sec. 4. (a) Except as provided in
29 subsection (b), the right of election of the surviving spouse is personal
30 to the spouse. It is not transferable and cannot be exercised subsequent
31 to the spouse's death. A person with a valid power of attorney for the
32 surviving spouse may elect for the spouse if the power of attorney has
33 general authority with respect to estates as provided in
34 ~~IC 30-5-5-15(a)(4).~~ **IC 30-6-4-12.** If the surviving spouse is a protected
35 person, the court may order the guardian of the spouse's estate to elect
36 for the spouse.

37 (b) The spousal election may be exercised subsequent to the
38 spouse's death under the following circumstances:

39 (1) The surviving spouse died before the election could be made.

40 (2) The election is being made to recover Medicaid benefits that
41 were paid on behalf of the deceased surviving spouse.

42 The office of Medicaid policy and planning may exercise the right of



1 election under this subsection. The spousal election is only enforceable
 2 up to the amount of Medicaid benefits that were received and the
 3 amount may only be distributed to the office of Medicaid policy and
 4 planning.

5 SECTION 14. IC 29-1-7.5-3, AS AMENDED BY P.L.95-2007,
 6 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 2008]: Sec. 3. (a) Subject to section 2(d) of this chapter, a
 8 personal representative who administers an estate under this chapter
 9 may do the following without order of the court:

10 (1) Retain assets owned by the decedent pending distribution or
 11 liquidation including those in which the representative is
 12 personally interested or which are otherwise improper for trust
 13 investment.

14 (2) Receive assets from fiduciaries or other sources.

15 (3) Perform, compromise, or refuse performance of the decedent's
 16 contracts that continue as obligations of the estate, as the personal
 17 representative may determine under the circumstances. In
 18 performing enforceable contracts by the decedent to convey or
 19 lease land, the personal representative, among other possible
 20 courses of action, may:

21 (A) execute and deliver a deed of conveyance for cash
 22 payment of all sums remaining due or the purchaser's note for
 23 the sum remaining due secured by a mortgage or deed of trust
 24 on the land; or

25 (B) deliver a deed in escrow with directions that the proceeds,
 26 when paid in accordance with the escrow agreement, be paid
 27 to the successors of the decedent, as designated in the escrow
 28 agreement.

29 (4) Satisfy written charitable pledges of the decedent irrespective
 30 of whether the pledges constituted binding obligations of the
 31 decedent or were properly presented as claims, if in the judgment
 32 of the personal representative the decedent would have wanted
 33 the pledges completed under the circumstances.

34 (5) If funds are not needed to meet debts and expenses currently
 35 payable and are not immediately distributable, deposit or invest
 36 liquid assets of the estate, including moneys received from the
 37 sale of other assets, in federally insured interest-bearing accounts,
 38 readily marketable secured loan arrangements, or other prudent
 39 investments which would be reasonable for use by trustees
 40 generally.

41 (6) Acquire or dispose of an asset, including land in this or
 42 another state, for cash or on credit, at public or private sale; and



1 manage, develop, improve, exchange, partition, change the
2 character of, or abandon an estate asset.

3 (7) Make ordinary or extraordinary repairs or alterations in
4 buildings or other structures, demolish any improvements, raze
5 existing or erect new party walls or buildings.

6 (8) Subdivide, develop, or dedicate land to public use; make or
7 obtain the vacation of plats and adjust boundaries; or adjust
8 differences in valuation on exchange or partition by giving or
9 receiving considerations; or dedicate easements to public use
10 without consideration.

11 (9) Enter for any purpose into a lease as lessor or lessee, with or
12 without option to purchase or renew, for a term within or
13 extending beyond the period of administration.

14 (10) Enter into a lease or arrangement for exploration and
15 removal of minerals or other natural resources or enter into a
16 pooling or unitization agreement.

17 (11) Abandon property when, in the opinion of the personal
18 representatives, it is valueless, or is so encumbered, or is in
19 condition that it is of no benefit to the estate.

20 (12) Vote stocks or other securities in person or by general or
21 limited proxy.

22 (13) Pay calls, assessments, and other sums chargeable or
23 accruing against or on account of securities, unless barred by the
24 provisions relating to claims.

25 (14) Hold a security in the name of a nominee or in other form
26 without disclosure of the interest of the estate but the personal
27 representative is liable for any act of the nominee in connection
28 with the security so held.

29 (15) Hold, manage, safeguard, and control the estate's real and
30 personal property, insure the assets of the estate against damage,
31 loss, and liability, and insure the personal representative
32 personally against liability as to third persons.

33 (16) Borrow money with or without security to be repaid from the
34 estate assets or otherwise and advance money for the protection
35 of the estate.

36 (17) Effect a fair and reasonable compromise with any debtor or
37 obligor, or extend, renew, or in any manner modify the terms of
38 any obligation owing to the estate. If the personal representative
39 holds a mortgage, pledge, or other lien upon property of another
40 person, the personal representative may, in lieu of foreclosure,
41 accept a conveyance or transfer of encumbered assets from the
42 owner thereof in satisfaction of the indebtedness secured by lien.



1 (18) Pay taxes, assessments, compensation of the personal
2 representative, and other expenses incident to the administration
3 of the estate.

4 (19) Hold an interest in a proprietorship, partnership, limited
5 liability company, business trust, corporation, or another domestic
6 or foreign form of business or enterprise.

7 (20) Continue a business.

8 (21) Take any action that may be taken by shareholders, partners,
9 members, or property owners, including contributing additional
10 capital to or merging, consolidating, reorganizing, recapitalizing,
11 dissolving, or otherwise changing the form of the business
12 organization.

13 (22) Allocate items of income or expense to either estate income
14 or principal, as permitted or provided by IC 30-2-14.

15 (23) Employ persons, including attorneys, auditors, investment
16 advisors, or agents, even if they are associated with the personal
17 representative, to advise or assist the personal representative in
18 the performance of the personal representative's administrative
19 duties; act without independent investigation upon their
20 recommendations; and instead of acting personally, employ one
21 (1) or more agents to perform any act of administration, whether
22 or not discretionary.

23 (24) Do any of the following concerning a claim or demand made
24 in favor of or against the estate for the protection of the estate and
25 of the personal representative in the performance of the personal
26 representative's duties:

27 (A) Release, assign, settle, compromise, or contest the claim
28 or demand.

29 (B) Participate in mediation or submit to arbitration to resolve
30 any dispute concerning the claim or demand.

31 (C) Extend the time for payment of the claim or demand.

32 (D) Abandon the claim or demand.

33 (25) Sell, mortgage, or lease any real or personal property of the
34 estate or any interest therein for cash, credit, or for part cash and
35 part credit, and with or without security for unpaid balances.

36 (26) Select a settlement option under any qualified or
37 nonqualified benefit or retirement plan, annuity, or life insurance
38 payable to the estate, and take appropriate action to collect the
39 proceeds.

40 (27) Inspect and investigate property held, directly or indirectly,
41 by the personal representative for the purpose of:

42 (A) determining the application of environmental law with



respect to the property; and

(B) doing the following:

(i) Take action to prevent, abate, or remedy an actual or a potential violation of an environmental law affecting the property, whether taken before or after the assertion of a claim or the initiation of governmental enforcement by federal, state, or local authorities.

(ii) Compromise claims against the estate that may be asserted for an alleged violation of environmental law.

(iii) Pay the expense of inspection, review, abatement, or remedial action to comply with the environmental law.

(28) Distribute assets of the estate upon such terms as the personal representative may impose. To the extent practicable, taking into account the decedent's probable intention, the power to distribute assets includes the power to:

(A) pay an amount to a distributee who is under a legal disability or whom the personal representative reasonably believes to be incapacitated by:

(i) paying the amount directly to the distributee or applying the amount for the distributee's use and benefit;

(ii) paying the amount to the guardian appointed for the distributee;

(iii) paying the amount to a custodian under the Indiana Uniform Transfers to Minors Act (IC 30-2-8.5) or a custodial trustee under the Uniform Custodial Trust Act (IC 30-2-8.6); or

(iv) paying the amount to the trustee of a trust established by the decedent or by the personal representative under subsection (b); and

(B) make distributions of estate income and principal in kind, in cash, or partly in each, in shares of differing composition.

(29) Perform any other act necessary or appropriate to administer the estate.

(b) A personal representative who administers an estate under this chapter may, without court order, establish a trust to make distributions to a distributee who is under a legal disability or whom the personal representative reasonably believes is incapacitated. In establishing a trust under this subsection, a personal representative may exercise:

(1) the authority given to custodians under the Indiana Uniform Transfers to Minors Act (IC 30-2-8.5) to create a trust that satisfies the requirements of Section 2503(c) of the Internal Revenue Code and the regulations adopted under that Section; or



(2) the authority given to an ~~attorney in fact~~ **agent** under ~~IC 30-5-5-15(a)(3)~~ **IC 30-6-4-12** to establish a revocable trust for the benefit of a principal.

SECTION 15. IC 29-3-5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. The court shall appoint as guardian a qualified person or persons most suitable and willing to serve, having due regard to the following:

(1) Any request made by a person alleged to be an incapacitated person, including designations in a durable power of attorney under ~~IC 30-5-3-4(a)~~ **IC 30-6-3-5**.

(2) Any request contained in a will or other written instrument.

(3) Any request made by a minor who is at least fourteen (14) years of age.

(4) Any request made by the spouse of the alleged incapacitated person.

(5) The relationship of the proposed guardian to the individual for whom guardianship is sought.

(6) Any person acting for the incapacitated person under a durable power of attorney.

(7) The best interest of the incapacitated person or minor and the property of the incapacitated person or minor.

SECTION 16. IC 29-3-8.5-9, AS AMENDED BY P.L.11-2006, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 9. A volunteer advocate for seniors or a volunteer advocate for incapacitated adults under this chapter is not authorized to consent to or refuse health care (as defined in IC 16-36-1-1) for an individual if:

(1) a spouse, a parent, an adult child, or an adult sibling of the individual or the individual's religious superior, if the individual is a member of a religious order, is available, capable, and suitable to consent to or refuse the health care on behalf of the individual; or

(2) the individual has previously:

(A) appointed a health care representative under IC 16-36-1;

(B) authorized health care under IC 16-36-1.5, IC 16-36-4, or IC 16-36-5;

(C) executed a power of attorney under ~~IC 30-5-4~~ **IC 30-6**; or

(D) had a guardian appointed by the court under IC 29-3.

SECTION 17. IC 30-2-13-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 9. (a) Except as provided in subsection (b), as used in this chapter, "purchaser" means a person or firm contracting with a seller for services or merchandise



to be provided or delivered for a named individual.

(b) As used in section 13(b) of this chapter, "purchaser" means:

- (1) an individual described in subsection (a);
- (2) the ~~attorney in fact~~, **agent**, appointed under ~~IC 30-5~~, **IC 30-6**, of an individual described in subsection (a);
- (3) the guardian, appointed under IC 29-3, of an individual described in subsection (a); or
- (4) if an individual described in subsection (a) is deceased:
 - (A) the surviving spouse of the individual;
 - (B) if there is no surviving spouse, the adult children of the individual;
 - (C) if there is no surviving spouse or surviving adult child, the surviving parent or parents of the individual; or
 - (D) if there is neither a surviving spouse nor adult children, nor a surviving parent, the personal representative (as defined in IC 29-1-1-3) of the individual.

SECTION 18. IC 30-6 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]:

ARTICLE 6. UNIFORM POWER OF ATTORNEY ACT

Chapter 1. Short Title and Applicability

Sec. 1. This article may be cited as the Uniform Power of Attorney Act.

Sec. 2. This article applies to all powers of attorney except the following:

- (1) A power to the extent it is coupled with an interest in the subject of the power, including a power given to or for the benefit of a creditor in connection with a credit transaction.
- (2) A power to make health care decisions.
- (3) A proxy or other delegation to exercise voting rights or management rights with respect to an entity.
- (4) A power created on a form prescribed by a government or a governmental subdivision, agency, or instrumentality for a governmental purpose.

Sec. 3. Except as otherwise provided in this article:

- (1) this article applies to a power of attorney created before, on, or after July 1, 2008;
- (2) this article applies to a judicial proceeding concerning a power of attorney commenced after June 30, 2008;
- (3) this article applies to a judicial proceeding concerning a power of attorney commenced before July 1, 2008, unless the court finds that application of a provision of this article would



1 substantially interfere with the effective conduct of the
 2 judicial proceeding or prejudice the rights of a party; and
 3 (4) an act done before July 1, 2008, is not affected by this
 4 article.

5 Sec. 4. In applying and construing this uniform act,
 6 consideration must be given to the need to promote uniformity of
 7 the law with respect to its subject matter among other states that
 8 enact it.

9 Chapter 2. Definitions

10 Sec. 1. (a) As used in this article, "agent" means a person
 11 granted authority to act for a principal under a power of attorney.

12 (b) The term includes an original agent, a coagent, a successor
 13 agent, and a person to which an agent's authority is delegated.

14 Sec. 2. As used in this article, "durable" means, with respect to
 15 a power of attorney, not terminated by a principal's incapacity.

16 Sec. 3. As used in this article, "electronic" means relating to
 17 technology having electrical, digital, magnetic, wireless, optical,
 18 electromagnetic, or similar capabilities.

19 Sec. 4. As used in this article, "good faith" means honesty in
 20 fact.

21 Sec. 5. (a) As used in this article, a person that is
 22 "incapacitated" means an incapacitated person (as defined in
 23 IC 29-3-1-7.5).

24 (b) The term includes a person who is outside the United States
 25 and unable to return.

26 Sec. 6. As used in this article, "person" means an individual, a
 27 corporation, a business trust, an estate, a trust, a partnership, a
 28 limited liability company, an association, a joint venture, a public
 29 corporation, a government or governmental subdivision, an
 30 agency, an instrumentality, or any other legal or commercial
 31 entity.

32 Sec. 7. As used in this article, "power of attorney" means a
 33 writing or another record that grants authority to an agent to act
 34 in the place of a principal, whether or not the term power of
 35 attorney is used.

36 Sec. 8. (a) As used in this article, "presently exercisable general
 37 power of appointment" means power to vest absolute ownership in
 38 the:

- 39 (1) principal;
- 40 (2) principal's estate;
- 41 (3) principal's creditors; or
- 42 (4) creditors of the principal's estate.



(b) The term includes a power of appointment that may not be exercised until the:

- (1) occurrence of a specified event;
- (2) satisfaction of an ascertainable standard; or
- (3) passage of a specified period only after the occurrence of the specified event, the satisfaction of the ascertainable standard, or the passage of the specified period.

(c) The term does not include a power that may be exercised:

- (1) in a fiduciary capacity; or
- (2) only by will.

Sec. 9. As used in this article, "principal" means an individual who grants authority to an agent in a power of attorney.

Sec. 10. As used in this article, "property" means anything that may be the subject of ownership.

Sec. 11. As used in this article, "record" means information that is:

- (1) inscribed on a tangible medium; or
 - (2) stored in an electronic or other medium;
- and is retrievable in perceivable form.

Sec. 12. As used in this article, "sign" means, with present intent to authenticate or adopt a record:

- (1) to execute or adopt a tangible symbol; or
- (2) to attach to or logically associate with the record an electronic sound, symbol, or process.

Sec. 13. As used in this article, "state" means:

- (1) a state of the United States;
- (2) the District of Columbia;
- (3) Puerto Rico;
- (4) the United States Virgin Islands; or
- (5) any territory or insular possession subject to the jurisdiction of the United States.

Sec. 14. (a) As used in this article, "stocks and bonds" means stocks, bonds, mutual funds, and any other type of securities or financial instruments.

(b) The term does not include commodity futures contracts and call or put options on stocks or stock indexes.

Chapter 3. General Provisions

Sec. 1. A power of attorney created under this article is durable unless it expressly provides that it is terminated by the incapacity of the principal.

Sec. 2. A power of attorney must be signed by:

- (1) the principal; or



(2) in the principal's conscious presence, another individual directed by the principal to sign the principal's name on the power of attorney.

A signature on a power of attorney is presumed to be genuine if the principal acknowledges the signature before a notary public or other individual authorized by law to take acknowledgments.

Sec. 3. (a) A power of attorney executed in Indiana after June 30, 2008, is valid if its execution complies with section 2 of this chapter.

(b) A power of attorney executed in Indiana before July 1, 2008, is valid if its execution complied with Indiana law at the time of execution.

(c) A power of attorney executed in another state is valid in Indiana if, when the power of attorney was executed, the execution complied with:

(1) the law of the jurisdiction that determines the meaning and effect of the power of attorney pursuant to section 4 of this chapter; or

(2) the requirements for a military power of attorney under 10 U.S.C. 1044b.

(d) Except as otherwise provided by law, a photocopy or an electronic copy of an original power of attorney has the same effect as the original.

Sec. 4. The meaning and effect of a power of attorney are determined by the law of the jurisdiction indicated in the power of attorney and, in the absence of an indication of jurisdiction, by the law of the jurisdiction in which the power of attorney was executed.

Sec. 5. (a) In a power of attorney, a principal may nominate a guardian of the principal's estate or person for consideration by the court if protective proceedings for the principal's estate or person are begun after the principal executes the power of attorney. Except for good cause shown or disqualification, the court shall make its appointment in accordance with the principal's most recent nomination.

(b) If, after a principal executes a power of attorney, a court appoints a guardian of the principal's estate or other fiduciary charged with the management of some or all of the principal's property, the agent is accountable to the fiduciary as well as to the principal. The power of attorney is not terminated and the agent's authority continues unless limited, suspended, or terminated by the court.



1 **Sec. 6. (a) A power of attorney is effective when executed unless**
 2 **the principal provides in the power of attorney that it becomes**
 3 **effective at a future date or upon the occurrence of a future event**
 4 **or contingency.**

5 **(b) If a power of attorney becomes effective upon the occurrence**
 6 **of a future event or contingency, the principal may authorize one**
 7 **(1) or more persons to determine in a writing or another record**
 8 **that the event or contingency has occurred.**

9 **(c) If a power of attorney becomes effective upon the principal's**
 10 **incapacity and the principal has not authorized a person to**
 11 **determine whether the principal is incapacitated, or the person**
 12 **authorized is unable or unwilling to make the determination, the**
 13 **power of attorney becomes effective upon a determination that the**
 14 **principal is incapacitated in a writing or other record by:**

15 **(1) a physician or licensed psychologist; or**

16 **(2) an attorney at law, a judge, or an appropriate**
 17 **governmental official.**

18 **(d) A person authorized by the principal in the power of**
 19 **attorney to determine that the principal is incapacitated may act**
 20 **as the principal's personal representative under the Health**
 21 **Insurance Portability and Accountability Act of 1996 (42 U.S.C.**
 22 **201 et seq.) and associated regulation to obtain access to the**
 23 **principal's health care information and communicate with the**
 24 **principal's health care provider.**

25 **Sec. 7. (a) A power of attorney terminates when:**

26 **(1) the principal dies;**

27 **(2) the principal becomes incapacitated, if the power of**
 28 **attorney is not durable;**

29 **(3) the principal revokes the power of attorney;**

30 **(4) the power of attorney provides that it terminates;**

31 **(5) the purpose of the power of attorney is accomplished; or**

32 **(6) the principal revokes the agent's authority or the agent**
 33 **dies, becomes incapacitated, or resigns, and the power of**
 34 **attorney does not provide for another agent to act under the**
 35 **power of attorney.**

36 **(b) An agent's authority terminates when:**

37 **(1) the principal revokes the authority;**

38 **(2) the agent dies, becomes incapacitated, or resigns;**

39 **(3) an action is filed for the dissolution of the agent's marriage**
 40 **to the principal or their legal separation, unless the power of**
 41 **attorney otherwise provides; or**

42 **(4) the power of attorney terminates.**



1 (c) Unless the power of attorney otherwise provides, an agent's
2 authority is exercisable until the authority terminates under
3 subsection (b) even if time has passed since the execution of the
4 power of attorney.

5 (d) Termination of an agent's authority or of a power of
6 attorney is not effective as to the agent or another person that,
7 without actual knowledge of the termination, acts in good faith
8 under the power of attorney. An act described in this subsection
9 binds the principal and the principal's successors in interest unless
10 the act is invalid or unenforceable.

11 (e) Incapacity of the principal of a power of attorney that is not
12 durable does not revoke or terminate the power of attorney as to
13 an agent or another person that, without actual knowledge of the
14 incapacity, acts in good faith under the power of attorney. An act
15 described in this subsection binds the principal and the principal's
16 successors in interest unless the act is invalid or unenforceable.

17 (f) The execution of a power of attorney does not revoke a power
18 of attorney previously executed by the principal unless the
19 subsequent power of attorney provides that the previous power of
20 attorney is revoked or that all other powers of attorney are
21 revoked.

22 Sec. 8. (a) A principal may designate two (2) or more persons to
23 act as coagents. Unless the power of attorney otherwise provides,
24 each coagent may exercise authority independently.

25 (b) A principal may designate one (1) or more successor agents
26 to act if an agent resigns, dies, becomes incapacitated, is not
27 qualified to serve, or declines to serve. A principal may grant
28 authority to designate one (1) or more successor agents to an agent
29 or another person designated by name, office, or function. Unless
30 the power of attorney otherwise provides, a successor agent:

- 31 (1) has the same authority as the original agent; and
- 32 (2) may not act until all predecessor agents have resigned,
33 died, become incapacitated, are no longer qualified to serve,
34 or have declined to serve.

35 (c) Except as otherwise provided in the power of attorney and
36 subsection (d), an agent that does not participate in or conceal a
37 breach of fiduciary duty committed by another agent, including a
38 predecessor agent, is not liable for the actions of the other agent.

39 (d) An agent that has actual knowledge of a breach or an
40 imminent breach of fiduciary duty by another agent shall notify the
41 principal and, if the principal is incapacitated, take any action
42 reasonably appropriate in the circumstances to safeguard the



principal's best interest. An agent that fails to notify the principal or take action under this subsection is liable for the reasonably foreseeable damages that could have been avoided if the agent had notified the principal or taken action.

Sec. 9. Unless a power of attorney otherwise provides, an agent is entitled to:

- (1) reimbursement of expenses reasonably incurred on behalf of the principal; and
- (2) compensation that is reasonable under the circumstances.

Sec. 10. Except as otherwise provided in the power of attorney, a person accepts appointment as an agent under a power of attorney by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance.

Sec. 11. (a) Notwithstanding the power of attorney, an agent that has accepted appointment shall act:

- (1) in accordance with the principal's reasonable expectations to the extent actually known by the agent and, otherwise, in the principal's best interest;
- (2) in good faith; and
- (3) only within the scope of authority granted in the power of attorney.

(b) Except as otherwise provided in the power of attorney, an agent that has accepted appointment shall:

- (1) act loyally for the principal's benefit;
- (2) act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest;
- (3) act with the care, competence, and diligence ordinarily exercised by agents in similar circumstances;
- (4) keep a record of all receipts, disbursements, and transactions made on behalf of the principal;
- (5) cooperate with a person that has authority to make health care decisions for the principal to carry out the principal's reasonable expectations to the extent actually known by the agent and, otherwise, act in the principal's best interest; and
- (6) attempt to preserve the principal's estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal's best interest based on all relevant factors, including:
 - (A) the value and nature of the principal's property;
 - (B) the principal's foreseeable obligations and need for maintenance;



1 (C) minimization of taxes; and

2 (D) the principal's eligibility for a benefit, a program, or
3 assistance under a statute or regulation.

4 (c) An agent that acts in good faith is not liable to a beneficiary
5 of the principal's estate plan for failure to preserve the plan.

6 (d) An agent that acts with care, competence, and diligence in
7 the best interest of the principal is not liable solely because the
8 agent also benefits from the act or has an individual or conflicting
9 interest in relation to the property or affairs of the principal.

10 (e) If an agent is selected by the principal:

11 (1) because of special skills or expertise possessed by the
12 agent; or

13 (2) in reliance on the agent's representation that the agent has
14 special skills or expertise;

15 the special skills or expertise must be considered in determining
16 whether the agent has acted with care, competence, and diligence
17 under the circumstances.

18 (f) Absent a breach of duty to the principal, an agent is not
19 liable if the value of the principal's property declines.

20 (g) An agent that:

21 (1) exercises authority to delegate to another person the
22 authority granted by the principal; or

23 (2) engages another person on behalf of the principal;
24 is not liable for an act, error of judgment, or default of the other
25 person if the agent exercises care, competence, and diligence in
26 selecting and monitoring the other person.

27 (h) Except as otherwise provided in the power of attorney, an
28 agent is not required to disclose receipts, disbursements, or
29 transactions conducted on behalf of the principal unless:

30 (1) ordered by a court; or

31 (2) requested by:

32 (A) the principal;

33 (B) a guardian;

34 (C) a conservator;

35 (D) another fiduciary acting for the principal;

36 (E) a governmental agency having authority to protect the
37 welfare of the principal; or

38 (F) upon the death of the principal, the personal
39 representative or successor in interest of the principal's
40 estate.

41 Not more than thirty (30) days after a request under subdivision
42 (2), the agent shall comply with the request or provide a writing or



1 other record substantiating why additional time is needed and shall
2 comply with the request within an additional thirty (30) days.

3 **Sec. 12. A provision in a power of attorney relieving an agent of**
4 **liability for breach of duty is binding on the principal and the**
5 **principal's successors in interest unless the provision:**

6 (1) relieves the agent of liability for breach of duty committed
7 dishonestly, with an improper motive, or with reckless
8 indifference to the purposes of the power of attorney or the
9 best interest of the principal; or

10 (2) was inserted as a result of an abuse of a confidential or
11 fiduciary relationship with the principal.

12 **Sec. 13. (a) The following persons may petition a court to**
13 **construe a power of attorney or review an agent's conduct and**
14 **grant appropriate relief:**

15 (1) The principal or the agent.

16 (2) A guardian, a conservator, or another fiduciary acting for
17 the principal.

18 (3) A person authorized to make health care decisions for the
19 principal.

20 (4) The principal's spouse, parent, or descendant.

21 (5) An individual who would qualify as a presumptive heir of
22 the principal.

23 (6) A person named as a beneficiary:

24 (A) to receive any property, benefit, or contractual right on
25 the principal's death; or

26 (B) of a trust created by or for the principal;
27 that has a financial interest in the principal's estate.

28 (7) A governmental agency having regulatory authority to
29 protect the welfare of the principal.

30 (8) The principal's caregiver or another person that
31 demonstrates sufficient interest in the principal's welfare.

32 (9) A person asked to accept the power of attorney.

33 (b) Upon motion by the principal, the court shall dismiss a
34 petition filed under this section unless the court finds that the
35 principal lacks capacity to revoke the agent's authority or the
36 power of attorney.

37 **Sec. 14. An agent that violates this article is liable to the**
38 **principal or the principal's successors in interest for the amount**
39 **required to:**

40 (1) restore the value of the principal's property to what it
41 would have been had the violation not occurred; and

42 (2) reimburse the principal or the principal's successors in



1 interest for the attorney's fees and costs paid on the agent's
2 behalf.

3 **Sec. 15. Unless a power of attorney provides a different method**
4 **for an agent's resignation, an agent may resign by giving notice to**
5 **the principal and, if the principal is incapacitated:**

6 (1) to the guardian, if one has been appointed for the
7 principal, and a coagent or successor agent; or

8 (2) if there is no person described in subdivision (1), to:

9 (A) the principal's caregiver;

10 (B) another person reasonably believed by the agent to
11 have sufficient interest in the principal's welfare; or

12 (C) a governmental agency having authority to protect the
13 welfare of the principal.

14 **Sec. 16. (a) For purposes of this section and section 17 of this**
15 **chapter, "acknowledged" means purportedly verified before a**
16 **notary public or another individual authorized to take**
17 **acknowledgments.**

18 (b) A person that in good faith accepts an acknowledged power
19 of attorney without actual knowledge that the signature is not
20 genuine may rely upon the presumption under section 2 of this
21 chapter that the signature is genuine.

22 (c) A person that in good faith accepts an acknowledged power
23 of attorney without actual knowledge that:

24 (1) the power of attorney is void, invalid, or terminated;

25 (2) the purported agent's authority is void, invalid, or
26 terminated; or

27 (3) the agent is exceeding or improperly exercising the agent's
28 authority;

29 may rely upon the power of attorney as if the power of attorney
30 were genuine, valid, and still in effect, the agent's authority were
31 genuine, valid, and still in effect, and the agent had not exceeded
32 and had properly exercised the authority.

33 (d) A person that is asked to accept an acknowledged power of
34 attorney may request and rely upon, without further investigation:

35 (1) an agent's certification under penalty of perjury of any
36 factual matter concerning the principal, agent, or power of
37 attorney;

38 (2) an English translation of the power of attorney if the
39 power of attorney contains language other than English; and

40 (3) an opinion of counsel as to any matter of law concerning
41 the power of attorney if the person making the request
42 provides in a writing or other record the reason for the



1 request.

2 (e) An English translation or an opinion of counsel requested
3 under this section must be provided at the principal's expense
4 unless the request is made more than seven (7) business days after
5 the power of attorney is presented for acceptance.

6 (f) For purposes of this section, a person that conducts activities
7 through employees is without actual knowledge of a fact relating
8 to a power of attorney, a principal, or an agent if the employee
9 conducting the transaction involving the power of attorney is
10 without actual knowledge of the fact.

11 Sec. 17. (a) Except as provided in subsection (b):

12 (1) not more than seven (7) business days after presentation
13 of a power of attorney for acceptance, a person shall either:

14 (A) accept an acknowledged power of attorney; or

15 (B) request a certification, a translation, or an opinion of
16 counsel under section 16(d) of this chapter;

17 (2) if a person requests a certification, a translation, or an
18 opinion of counsel under section 16(d) of this chapter, the
19 person shall accept the power of attorney not later than five
20 (5) business days after receipt of the certification, translation,
21 or opinion of counsel; and

22 (3) a person may not require an additional or a different form
23 of power of attorney for authority granted in the power of
24 attorney presented for acceptance.

25 (b) A person is not required to accept an acknowledged power
26 of attorney if:

27 (1) the person is not otherwise required to engage in a
28 transaction with the principal in the same circumstances;

29 (2) engaging in a transaction with the agent or the principal
30 in the same circumstances would be inconsistent with federal
31 law;

32 (3) the person has actual knowledge of the termination of the
33 agent's authority or of the power of attorney before exercise
34 of the power;

35 (4) a request for a certification, a translation, or an opinion of
36 counsel under section 16(d) of this chapter is refused;

37 (5) the person in good faith believes that:

38 (A) the power is not valid; or

39 (B) the agent does not have the authority to perform the
40 act requested;

41 whether or not a certification, a translation, or an opinion of
42 counsel under section 16(d) of this chapter has been requested



1 or provided; or

2 (6) the person makes, or has actual knowledge that another
3 person has made, a report to the appropriate adult protective
4 services unit stating a good faith belief that the principal may
5 be subject to physical or financial abuse, neglect, exploitation,
6 or abandonment by the agent or a person acting for or with
7 the agent.

8 (c) A person that refuses to accept an acknowledged power of
9 attorney is subject to:

10 (1) a court order mandating acceptance of the power of
11 attorney; and

12 (2) liability for reasonable attorney's fees and costs incurred
13 in any action or proceeding that confirms the validity of the
14 power of attorney or mandates acceptance of the power of
15 attorney.

16 (d) For purposes of this section, a person that conducts activities
17 through employees is without actual knowledge of a fact relating
18 to a power of attorney, a principal, or an agent if the employee
19 conducting the transaction involving the power of attorney is
20 without actual knowledge of the fact.

21 Sec. 18. Unless otherwise provided, the principles of law and
22 equity supplement this article.

23 Sec. 19. This article does not supersede any other law applicable
24 to financial institutions or other entities, and the other law controls
25 if it is inconsistent with this article.

26 Sec. 20. This article modifies, limits, and supersedes the federal
27 Electronic Signatures in Global and National Commerce Act (15
28 U.S.C. 7001 et seq.) but does not modify, limit, or supersede Section
29 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic
30 delivery of any of the notices described in Section 103(b) of that
31 act, 15 U.S.C. 7003(b).

32 Sec. 21. The remedies under this article are not exclusive and do
33 not abrogate any right or remedy under Indiana law other than
34 this article.

35 Chapter 4. Authority

36 Sec. 1. This chapter applies to language in a power of attorney
37 unless language in the power of attorney provides otherwise.

38 Sec. 2. (a) An agent under a power of attorney may do the
39 following on behalf of the principal or with the principal's property
40 only if the power of attorney expressly grants the agent the
41 authority and exercise of the authority is not otherwise prohibited
42 by another agreement or instrument to which the authority or



- 1 property is subject:
- 2 (1) Create, amend, revoke, or terminate an inter vivos trust.
- 3 (2) Make a gift.
- 4 (3) Create or change rights of survivorship.
- 5 (4) Create or change a beneficiary designation.
- 6 (5) Delegate authority granted under the power of attorney.
- 7 (6) Waive the principal's right to be a beneficiary of a joint
- 8 and survivor annuity, including a survivor benefit under a
- 9 retirement plan.
- 10 (7) Exercise fiduciary powers that the principal has authority
- 11 to delegate.
- 12 (b) Notwithstanding a grant of authority to do an act described
- 13 in subsection (a), an agent that is not an ancestor, a spouse, or a
- 14 descendant of the principal may not exercise authority under a
- 15 power of attorney to create in the agent, or in an individual to
- 16 whom the agent owes a legal obligation of support, an interest in
- 17 the principal's property.
- 18 (c) Subject to subsections (a), (b), (d), and (e), if a power of
- 19 attorney grants to an agent authority to do all acts that a principal
- 20 could do, the agent has the general authority described in sections
- 21 5 through 17 of this chapter.
- 22 (d) A grant of authority to make a gift is subject to section 18 of
- 23 this chapter.
- 24 (e) Subject to subsections (a), (b), and (d), if the subjects over
- 25 which authority is granted in a power of attorney are similar or
- 26 overlap, the broadest authority controls.
- 27 (f) Authority granted in a power of attorney is exercisable with
- 28 respect to property that the principal has or acquires at any time.
- 29 (g) An act performed by an agent pursuant to a power of
- 30 attorney:
- 31 (1) has the same effect; and
- 32 (2) inures to the benefit of and binds the principal and the
- 33 principal's successors in interest;
- 34 as if the principal had performed the act.
- 35 Sec. 3. (a) An agent has authority described in this chapter if the
- 36 power of attorney refers to general authority with respect to the
- 37 descriptive term for the subjects stated in sections 5 through 18 of
- 38 this chapter or cites the section in which the authority is described.
- 39 (b) A reference in a power of attorney to general authority with
- 40 respect to the descriptive term for a subject in sections 5 through
- 41 18 of this chapter or a citation to sections 5 through 18 of this
- 42 chapter incorporates the entire section as if it were set out in full



1 in the power of attorney.

2 (c) A principal may modify authority incorporated by reference.

3 Sec. 4. A principal that executes a power of attorney that
4 incorporates by reference a subject described in sections 5 through
5 18 of this chapter or that grants to an agent authority to do all acts
6 that a principal could do under section 2(c) of this chapter
7 authorizes the agent, with respect to that subject, to do the
8 following:

9 (1) Demand, receive, and obtain money or another thing of
10 value to which the principal is, may become, or claims to be
11 entitled, and conserve, invest, disburse, or use the money or
12 thing of value for the purposes intended.

13 (2) Contract in any manner with any person, on terms
14 agreeable to the agent, to accomplish a purpose of a
15 transaction and perform, rescind, cancel, terminate, reform,
16 restate, release, or modify the contract or another contract
17 made by or on behalf of the principal.

18 (3) Execute, acknowledge, seal, deliver, file, or record any
19 instrument or communication the agent considers desirable to
20 accomplish a purpose of a transaction, including creating at
21 any time a schedule listing some or all of the principal's
22 property and attaching it to the power of attorney.

23 (4) Initiate, participate in, submit to alternative dispute
24 resolution, settle, oppose, propose, or accept a compromise
25 with respect to a claim existing in favor of or against the
26 principal or intervene in litigation relating to the claim.

27 (5) Seek on the principal's behalf the assistance of a court or
28 another governmental agency to carry out an act authorized
29 in the power of attorney.

30 (6) Engage, compensate, and discharge an attorney, an
31 accountant, a discretionary investment manager, an expert
32 witness, or another advisor.

33 (7) Prepare, execute, and file a record, report, or other
34 document to safeguard or promote the principal's interest
35 under a statute or regulation.

36 (8) Communicate with any representative or employee of a
37 government or governmental subdivision, agency, or
38 instrumentality on behalf of the principal.

39 (9) Access communications intended for and communicate on
40 behalf of the principal.

41 (10) Do any lawful act with respect to the subject and all
42 property related to the subject.



1 **Sec. 5. Language in a power of attorney granting general**
 2 **authority with respect to real property authorizes the agent to do**
 3 **the following:**

4 **(1) Demand, buy, lease, receive, accept as a gift or as security**
 5 **for an extension of credit, or otherwise acquire or reject an**
 6 **interest in real property or a right incident to real property.**

7 **(2) Sell, exchange, convey, quitclaim, release, surrender,**
 8 **retain title for security, encumber, partition, consent to**
 9 **partitioning, subject to an easement or covenant, subdivide,**
 10 **apply for governmental permits, plat, consent to platting,**
 11 **develop, grant an option concerning, lease, sublease,**
 12 **contribute to an entity in exchange for an interest in that**
 13 **entity, or otherwise grant or dispose of an interest in real**
 14 **property or a right incident to real property.**

15 **(3) Pledge or mortgage an interest in real property or a right**
 16 **incident to real property as security to borrow money or pay,**
 17 **renew, or extend the time of payment of a debt of the**
 18 **principal or a debt guaranteed by the principal.**

19 **(4) Release, assign, satisfy, or enforce a mortgage, deed of**
 20 **trust, conditional sale contract, encumbrance, lien, or other**
 21 **claim to real property.**

22 **(5) Manage or conserve an interest in real property or a right**
 23 **incident to real property owned or claimed to be owned by the**
 24 **principal, including:**

25 **(A) insuring against liability or casualty or other loss;**

26 **(B) obtaining or regaining possession of or protecting the**
 27 **interest or right;**

28 **(C) paying, assessing, compromising, or contesting taxes or**
 29 **assessments or applying for and receiving refunds in**
 30 **connection with taxes or assessments; and**

31 **(D) purchasing supplies, hiring assistance or labor, and**
 32 **making repairs or alterations to the real property.**

33 **(6) Use, develop, alter, replace, remove, erect, or install**
 34 **structures or other improvements upon real property in or**
 35 **incident to which the principal has or asserts an interest or**
 36 **right.**

37 **(7) Participate in a reorganization with respect to real**
 38 **property or an entity that owns an interest in or right incident**
 39 **to real property and receive, hold, and act with respect to**
 40 **stocks and bonds or other property received in a plan of**
 41 **reorganization, including:**

42 **(A) selling or otherwise disposing of them;**



1 (B) exercising or selling an option, right of conversion, or
 2 similar right with respect to them; and

3 (C) exercising any voting rights in person or by proxy.

4 (8) Change the form of title of an interest in or right incident
 5 to real property.

6 (9) Dedicate to public use easements or other real property in
 7 which the principal has or asserts an interest.

8 Sec. 6. Language in a power of attorney granting general
 9 authority with respect to tangible personal property authorizes the
 10 agent to do the following:

11 (1) Demand, buy, receive, accept as a gift or as security for an
 12 extension of credit, or otherwise acquire or reject ownership
 13 or possession of tangible personal property or an interest in
 14 tangible personal property.

15 (2) Sell, exchange, convey, quitclaim, release, surrender,
 16 create a security interest in, grant options concerning, lease,
 17 sublease, or otherwise dispose of tangible personal property
 18 or an interest in tangible personal property.

19 (3) Grant a security interest in tangible personal property to
 20 borrow money or pay, renew, or extend the time of payment
 21 of a debt of the principal or a debt guaranteed by the
 22 principal.

23 (4) Release, assign, satisfy, or enforce a security interest, lien,
 24 or other claim on behalf of the principal with respect to
 25 tangible personal property or an interest in tangible personal
 26 property.

27 (5) Manage or conserve tangible personal property or an
 28 interest in tangible personal property on behalf of the
 29 principal, including:

30 (A) insuring against liability or casualty or other loss;

31 (B) obtaining or regaining possession of or protecting the
 32 property or interest;

33 (C) paying, assessing, compromising, or contesting taxes or
 34 assessments or applying for and receiving refunds in
 35 connection with taxes or assessments;

36 (D) moving the property from place to place;

37 (E) storing the property for hire or on a gratuitous
 38 bailment; and

39 (F) using and making repairs, alterations, or improvements
 40 to the property.

41 (6) Change the form of title of an interest in tangible personal
 42 property.



1 **Sec. 7. Language in a power of attorney granting general**
 2 **authority with respect to stocks and bonds authorizes the agent to**
 3 **do the following:**

- 4 (1) Buy, sell, and exchange stocks and bonds.
 5 (2) Establish, continue, modify, or terminate an account with
 6 respect to stocks and bonds.
 7 (3) Pledge stocks and bonds as security to borrow, pay, renew,
 8 or extend the time of payment of a debt of the principal.
 9 (4) Receive certificates and other evidences of ownership with
 10 respect to stocks and bonds.
 11 (5) Exercise voting rights with respect to stocks and bonds,
 12 enter into voting trusts, and consent to limitations on the right
 13 to vote.

14 **Sec. 8. Language in a power of attorney granting general**
 15 **authority with respect to commodities and options authorizes the**
 16 **agent to do the following:**

- 17 (1) Buy, sell, exchange, assign, settle, and exercise commodity
 18 futures contracts.
 19 (2) Call or put options on stocks or stock indexes traded on a
 20 regulated option exchange.
 21 (3) Establish, continue, modify, and terminate option
 22 accounts.

23 **Sec. 9. Language in a power of attorney granting general**
 24 **authority with respect to banks and other financial institutions**
 25 **authorizes the agent to do the following:**

- 26 (1) Continue, modify, or terminate an account or other
 27 banking arrangement made by or on behalf of the principal.
 28 (2) Establish, modify, or terminate an account or other
 29 banking arrangement with a bank, trust company, savings
 30 and loan association, credit union, thrift company, brokerage
 31 firm, or other financial institution selected by the agent.
 32 (3) Contract for services available from a financial institution,
 33 including renting a safe deposit box or space in a vault.
 34 (4) Withdraw money or property of the principal deposited
 35 with or left in the custody of a financial institution.
 36 (5) Receive statements of account, vouchers, notices, and
 37 similar documents from a financial institution and act with
 38 respect to the documents.
 39 (6) Enter a safe deposit box or vault and withdraw or add to
 40 the contents.
 41 (7) Borrow money and pledge as security personal property
 42 of the principal necessary to borrow money or pay, renew, or



1 extend the time of payment of a debt of the principal or a debt
2 guaranteed by the principal.

3 (8) Make, assign, draw, endorse, discount, guarantee, or
4 negotiate promissory notes, checks, drafts, and other paper of
5 the principal or payable to the principal or the principal's
6 order, transfer money, receive the proceeds of those
7 transactions, and accept a draft drawn by a person upon the
8 principal and pay it when due.

9 (9) Receive for the principal and act upon a sight draft,
10 warehouse receipt, or other document of title or instrument.

11 (10) Apply for, receive, and use letters of credit, credit and
12 debit cards, electronic transaction authorizations, and
13 traveler's checks from a financial institution, and give an
14 indemnity or other agreement in connection with letters of
15 credit.

16 (11) Consent to an extension of the time of payment with
17 respect to commercial paper or a financial transaction with a
18 financial institution.

19 **Sec. 10.** Subject to the terms of a document or an agreement
20 governing an entity or an entity ownership interest, language in a
21 power of attorney granting general authority with respect to
22 operation of an entity or business authorizes the agent to do the
23 following:

24 (1) Operate, buy, sell, enlarge, reduce, or terminate an
25 ownership interest.

26 (2) Perform a duty or discharge a liability and exercise a
27 right, power, privilege, or option of the principal.

28 (3) Enforce the terms of an ownership agreement.

29 (4) Initiate, participate in, submit to alternative dispute
30 resolution, settle, oppose, or propose or accept a compromise
31 with respect to litigation to which the principal is a party due
32 to an ownership interest.

33 (5) Exercise or enforce a right, power, privilege, or option the
34 principal has or claims to have as the holder of stocks and
35 bonds.

36 (6) Initiate, participate in, submit to alternative dispute
37 resolution, settle, oppose, or propose or accept a compromise
38 with respect to litigation to which the principal is a party
39 concerning stocks and bonds.

40 (7) With respect to an entity or business owned solely by the
41 principal:

42 (A) continue, modify, renegotiate, extend, or terminate a



contract made by or on behalf of the principal with respect to the entity or business before execution of the power of attorney;

(B) determine:

(i) the location of its operation;

(ii) the nature and extent of its business;

(iii) the methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in its operation;

(iv) the amount and types of insurance carried; and

(v) the mode of engaging, compensating, and dealing with its employees and accountants, attorneys, or other advisors;

(C) change the name or form of organization under which the entity or business is operated and enter into an ownership agreement with other persons to take over all or part of the operation of the entity or business; and

(D) demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the entity or business and control and disburse the money in the operation of the entity or business.

(8) Put additional capital into an entity or business in which the principal has an interest.

(9) Join in a plan of reorganization, consolidation, conversion, domestication, or merger of the entity or business.

(10) Sell or liquidate all or part of an entity or business.

(11) Establish the value of an entity or business under a buy out agreement to which the principal is a party.

(12) Prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to an entity or business and make related payments.

(13) Pay, compromise, or contest taxes, assessments, fines, or penalties and perform any other act to protect the principal from illegal or unnecessary taxation, assessments, fines, or penalties, with respect to an entity or business, including attempts to recover money paid before or after the execution of the power of attorney.

Sec. 11. Language in a power of attorney granting general authority with respect to insurance and annuities authorizes the agent to do the following:

(1) Continue, pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract



procured by or on behalf of the principal which insures or provides an annuity to either the principal or another person.

(2) Procure new, different, and additional contracts of insurance and annuities for the principal and the principal's spouse, children, and other dependents, and select the amount, type of insurance or annuity, and mode of payment.

(3) Pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract of insurance or annuity procured by the agent.

(4) Apply for and receive a loan secured by a contract of insurance or annuity.

(5) Surrender and receive the cash surrender value on a contract of insurance or annuity.

(6) Exercise an election.

(7) Exercise investment powers available under a contract of insurance or annuity.

(8) Change the manner of paying premiums on a contract of insurance or annuity.

(9) Change or convert the type of insurance or annuity with respect to which the principal has or claims to have authority described in this section.

(10) Apply for and procure a benefit or assistance under a statute or regulation to guarantee or pay premiums of a contract of insurance on the life of the principal.

(11) Collect, sell, assign, hypothecate, borrow against, or pledge the interest of the principal in a contract of insurance or annuity.

(12) Select the form and timing of the payment of proceeds from a contract of insurance or annuity.

(13) Pay, compromise or contest, and apply for refunds in connection with a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

Sec. 12. (a) For purposes of this section, "estates, trusts, and other beneficial interests" means a trust, a probate estate, a guardianship, a conservatorship, an escrow, or a custodianship or a fund from which the principal is, may become, or claims to be entitled to a share or payment.

(b) Language in a power of attorney granting general authority with respect to estates, trusts, and other beneficial interests authorizes the agent to do the following:



(1) Accept, receive, receipt for, sell, assign, pledge, or exchange a share in or payment from the fund.

(2) Demand or obtain money or another thing of value to which the principal is, may become, or claims to be entitled.

(3) Exercise for the benefit of the principal a presently exercisable general power of appointment held by the principal.

(4) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal.

(5) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to remove, substitute, or surcharge a fiduciary.

(6) Conserve, invest, disburse, or use anything received for an authorized purpose.

(7) Transfer an interest of the principal in real property, stocks and bonds, accounts with financial institutions or securities intermediaries, insurance, annuities, and other property to the trustee of a revocable trust created by the principal as settlor.

(8) Reject, renounce, disclaim, release, or consent to a reduction in or modification of a share in or payment from the fund.

Sec. 13. Language in a power of attorney granting general authority with respect to claims and litigation authorizes the agent to do the following:

(1) Assert and maintain before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, offset, recoupment, or defense, including an action to:

(A) recover property or another thing of value;

(B) recover damages sustained by the principal;

(C) eliminate or modify tax liability; or

(D) seek an injunction, specific performance, or other relief.

(2) Bring an action to determine adverse claims or intervene or otherwise participate in litigation.

(3) Seek an attachment, a garnishment, an order of arrest, or other relief and use an available procedure to effect or satisfy a judgment, order, or decree.



1 (4) Make or accept a tender, an offer of judgment, or an
 2 admission of facts, submit a controversy on an agreed
 3 statement of facts, consent to examination, and bind the
 4 principal in litigation.

5 (5) Submit to alternative dispute resolution, settle, and
 6 propose or accept a compromise.

7 (6) Waive the issuance and service of process upon the
 8 principal, accept service of process, appear for the principal,
 9 designate persons upon which process directed to the
 10 principal may be served, execute and file or deliver
 11 stipulations on the principal's behalf, verify pleadings, seek
 12 appellate review, procure and give surety and indemnity
 13 bonds, contract and pay for the preparation and printing of
 14 records and briefs, receive, execute, and file or deliver a
 15 consent, waiver, release, confession of judgment, satisfaction
 16 of judgment, notice, agreement, or other instrument in
 17 connection with the prosecution, settlement, or defense of a
 18 claim or litigation.

19 (7) Act for the principal with respect to bankruptcy or
 20 insolvency concerning the principal or another person, or
 21 with respect to a reorganization, receivership, or application
 22 for the appointment of a receiver or trustee which affects an
 23 interest of the principal in property or another thing of value.

24 (8) Pay a judgment, an award, or an order against the
 25 principal or a settlement made in connection with a claim or
 26 litigation.

27 (9) Receive money or another thing of value paid in settlement
 28 of or as proceeds of a claim or litigation.

29 Sec. 14. (a) Language in a power of attorney granting general
 30 authority with respect to personal and family maintenance
 31 authorizes the agent to do the following:

32 (1) Perform the acts necessary to maintain the customary
 33 standard of living of the principal, the principal's spouse, and
 34 the following individuals:

35 (A) The principal's children.

36 (B) Other individuals legally entitled to be supported by
 37 the principal.

38 (C) The individuals whom the principal has customarily
 39 supported or indicated the intent to support.

40 (2) Make periodic payments of child support and other family
 41 maintenance required by a court, a governmental agency, or
 42 an agreement to which the principal is a party.



1 **(3) Provide living quarters for the individuals described in**
 2 **subdivision (1) by:**

3 **(A) purchase, lease, or other contract; or**

4 **(B) paying the operating costs, including interest,**
 5 **amortization payments, repairs, improvements, and taxes,**
 6 **for premises owned by the principal or occupied by those**
 7 **individuals.**

8 **(4) Provide normal domestic help, usual vacations and travel**
 9 **expenses, and funds for shelter, clothing, food, appropriate**
 10 **education (including postsecondary and vocational**
 11 **education), and other current living costs for the individuals**
 12 **described in subdivision (1).**

13 **(5) Pay expenses for necessary health and custodial care for**
 14 **the individuals described in subdivision (1).**

15 **(6) Act as the principal's personal representative under the**
 16 **Health Insurance Portability and Accountability Act (42**
 17 **U.S.C. 201 et seq.) and applicable regulations in making**
 18 **decisions related to payment for the provision of health care**
 19 **consented to by the principal or anyone authorized under the**
 20 **law of Indiana to consent to health care on behalf of the**
 21 **principal.**

22 **(7) Continue any provision made by the principal for**
 23 **automobiles or other means of transportation, including**
 24 **registering, licensing, insuring, and replacing them, for the**
 25 **individuals described in subdivision (1).**

26 **(8) Maintain existing and open new credit and debit accounts**
 27 **for the convenience of the individuals described in subdivision**
 28 **(1).**

29 **(9) Continue payments incidental to the membership or**
 30 **affiliation of the principal in a religious institution, club,**
 31 **society, order, or other organization and continue**
 32 **contributions to those organizations.**

33 **(b) Authority with respect to personal and family maintenance**
 34 **is neither dependent upon, nor limited by, authority that an agent**
 35 **may or may not have with respect to gifts under this article.**

36 **Sec. 15. (a) As used in this section, "benefits from governmental**
 37 **programs or civil or military service" means any benefit, program,**
 38 **or assistance provided under a statute or regulation, including**
 39 **Social Security, Medicare, and Medicaid.**

40 **(b) Language in a power of attorney granting general authority**
 41 **with respect to benefits from governmental programs or civil or**
 42 **military service authorizes the agent to do the following:**



(1) Execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or political subdivision to the principal, including allowances and reimbursements for transportation of the individuals described in section 14(a)(1) of this chapter, and for shipment of household effects.

(2) Take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for that purpose.

(3) Enroll in, apply for, select, reject, change, amend, or discontinue, on the principal's behalf, a benefit or program.

(4) Prepare, file, and maintain a claim of the principal for a benefit or assistance to which the principal may be entitled under a statute or regulation.

(5) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation concerning any benefit or assistance the principal may be entitled to receive under a statute or regulation.

(6) Receive the financial proceeds of a claim described in subdivision (4) and conserve, invest, disburse, or use for a lawful purpose anything so received.

Sec. 16. (a) As used in this section, "retirement plan" means a plan or account created by an employer, the principal, or another individual to provide retirement benefits or deferred compensation of which the principal is a participant, beneficiary, or owner, including a plan or account under the following sections of the Internal Revenue Code:

(1) An individual retirement account under 26 U.S.C. 408.

(2) A Roth individual retirement account under 26 U.S.C. 408A.

(3) A deemed individual retirement account under 26 U.S.C. 408(q).

(4) An annuity or mutual fund custodial account under 26 U.S.C. 403(b).

(5) A pension, profit sharing, stock bonus, or other retirement plan qualified under 26 U.S.C. 401(a).

(6) A plan under 26 U.S.C. 457(b).

(7) A nonqualified deferred compensation plan under 26 U.S.C. 409A.



1 **(b) Language in a power of attorney granting general authority**
 2 **with respect to retirement plans authorizes the agent to do the**
 3 **following:**

4 **(1) Select the form and timing of payments under a retirement**
 5 **plan and withdraw benefits from a plan.**

6 **(2) Make a rollover, including a direct trustee to trustee**
 7 **rollover, of benefits from one retirement plan to another.**

8 **(3) Establish a retirement plan in the principal's name.**

9 **(4) Make contributions to a retirement plan.**

10 **(5) Exercise investment powers available under a retirement**
 11 **plan.**

12 **(6) Borrow from, sell assets to, or purchase assets from a**
 13 **retirement plan.**

14 **Sec. 17. Language in a power of attorney granting general**
 15 **authority with respect to taxes authorizes the agent to do the**
 16 **following:**

17 **(1) Prepare, sign, and file tax returns, claims for refunds,**
 18 **requests for extension of time, petitions regarding tax matters,**
 19 **and any other tax related documents, including receipts,**
 20 **offers, waivers, consents, including consents and agreements**
 21 **under 26 U.S.C. 2032A, closing agreements, and any power of**
 22 **attorney required by the Internal Revenue Service or other**
 23 **taxing authority with respect to a tax year upon which the**
 24 **statute of limitations has not run and the following**
 25 **twenty-five (25) tax years.**

26 **(2) Pay taxes due, collect refunds, post bonds, receive**
 27 **confidential information, and contest deficiencies determined**
 28 **by the Internal Revenue Service or another taxing authority.**

29 **(3) Exercise any election available to the principal under**
 30 **federal, state, local, or foreign tax law.**

31 **(4) Act for the principal in all tax matters for all periods**
 32 **before the Internal Revenue Service or other taxing authority.**

33 **Sec. 18. (a) As used in this section, a gift "for the benefit of" a**
 34 **person includes a gift to a trust, an account under the Uniform**
 35 **Transfers to Minors Act, and a tuition savings account or prepaid**
 36 **tuition plan as defined under 26 U.S.C. 529.**

37 **(b) Language in a power of attorney granting general authority**
 38 **with respect to gifts authorizes the agent only to do the following:**

39 **(1) Make outright to, or for the benefit of, a person a gift of**
 40 **any of the principal's property, including by the exercise of a**
 41 **presently exercisable general power of appointment held by**
 42 **the principal:**



(A) in an amount per donee not to exceed the annual dollar limits of the federal gift tax exclusion under 26 U.S.C. 2503(b) without regard to whether the federal gift tax exclusion applies to the gift; or

(B) if the principal's spouse agrees to consent to a split gift under 26 U.S.C. 2513, in an amount per donee not to exceed twice the annual federal gift tax exclusion limit.

(2) Consent under 26 U.S.C. 2513 to the splitting of a gift made by the principal's spouse in an amount per donee not to exceed the aggregate annual gift tax exclusions for both spouses.

(c) An agent may make a gift of the principal's property only as the agent determines is consistent with the principal's objectives if actually known by the agent and, if unknown, as the agent determines is consistent with the principal's best interest based on all relevant factors, including:

- (1) the value and nature of the principal's property;
- (2) the principal's foreseeable obligations and need for maintenance;
- (3) minimization of taxes;
- (4) eligibility for a benefit, a program, or assistance under a statute or regulation; and
- (5) the principal's personal history of making or joining in making gifts.

Chapter 5. Statutory Forms

Sec. 1. A document substantially in the following form may be used to create a statutory form power of attorney that has the meaning and effect prescribed by this article.

(INSERT NAME OF JURISDICTION)

STATUTORY FORM POWER OF ATTORNEY

IMPORTANT INFORMATION

This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The meaning of authority over subjects listed on this form is explained in the Uniform Power of Attorney Act, IC 30-6.

This power of attorney does not authorize the agent to make health care decisions for you.

You should select someone you trust to serve as your agent. Unless you specify otherwise, generally the agent's authority will continue



1 until you die or revoke the power of attorney or the agent resigns
2 or is unable to act for you.

3 Your agent is entitled to reasonable compensation unless you state
4 otherwise in the Special Instructions.

5 This form provides for designation of one agent. If you wish to
6 name more than one agent you may name a coagent in the Special
7 Instructions. Coagents are not required to act together unless you
8 include that requirement in the Special Instructions.

9 If your agent is unable or unwilling to act for you, your power of
10 attorney will end unless you have named a successor agent. You
11 may also name a second successor agent.

12 This power of attorney becomes effective immediately unless you
13 state otherwise in the Special Instructions.

14 If you have questions about the power of attorney or the authority
15 you are granting to your agent, you should seek legal advice before
16 signing this form.

17 DESIGNATION OF AGENT

18 I _____ name the following

19 (Name of Principal)

20 person as my agent:

21 Name of Agent:

22 _____
23 Agent's Address:

24 _____
25 Agent's Telephone

26 Number: _____

27 DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

28 If my agent is unable or unwilling to act for me, I name as my
29 successor agent:

30 Name of Successor Agent:

31 _____
32 Successor Agent's Address:

33 _____
34 Successor Agent's Telephone Number:

35 _____
36 If my successor agent is unable or unwilling to act for me, I name
37 as my second successor agent:

38 Name of Second Successor Agent:

39 _____
40 Second Successor Agent's Address:

41 _____
42 Second Successor Agent's Telephone Number:



GRANT OF GENERAL AUTHORITY

I grant my agent and any successor agent general authority to act for me with respect to the following subjects as defined in the Uniform Power of Attorney Act, IC 30-6:

(INITIAL each subject you want to include in the agent's general authority. If you wish to grant general authority over all of the subjects you may initial "All Preceding Subjects" instead of initialing each subject.)

- ☐ **Real Property**
- ☐ **Tangible Personal Property**
- ☐ **Stocks and Bonds**
- ☐ **Commodities and Options**
- ☐ **Banks and Other Financial Institutions**
- ☐ **Operation of Entity or Business**
- ☐ **Insurance and Annuities**
- ☐ **Estates, Trusts, and Other Beneficial Interests**
- ☐ **Claims and Litigation**
- ☐ **Personal and Family Maintenance**
- ☐ **Benefits from Governmental Programs or Civil or Military Service**
- ☐ **Retirement Plans**
- ☐ **Taxes**
- ☐ **All Preceding Subjects**

GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED the specific authority listed below:

(CAUTION: Granting any of the following will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death. INITIAL ONLY the specific authority you WANT to give your agent.)

- ☐ **Create, amend, revoke, or terminate an inter vivos trust**
- ☐ **Make a gift, subject to the limitations of the Uniform Power of Attorney Act (IC 30-6-4-18) and any special instructions in this power of attorney**
- ☐ **Create or change rights of survivorship**
- ☐ **Create or change a beneficiary designation**
- ☐ **Authorize another person to exercise the authority granted under this power of attorney**
- ☐ **Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under**



1 a retirement plan
 2 () Exercise fiduciary powers that the principal has
 3 authority to delegate

4 **LIMITATION ON AGENT'S AUTHORITY**

5 An agent that is not my ancestor, spouse, or descendant **MAY NOT**
 6 use my property to benefit the agent or a person to whom the agent
 7 owes an obligation of support unless I have included that authority
 8 in the Special Instructions.

9 **SPECIAL INSTRUCTIONS (OPTIONAL)**

10 You may give special instructions on the following lines:

11 _____
 12 _____
 13 _____
 14 _____
 15 _____
 16 _____
 17 _____
 18 _____
 19 _____
 20 _____

21 **EFFECTIVE DATE**

22 This power of attorney is effective immediately unless I have stated
 23 otherwise in the Special Instructions.

24 **NOMINATION OF GUARDIAN (OPTIONAL)**

25 If it becomes necessary for a court to appoint a guardian of my
 26 estate or person, I nominate the following person(s) for
 27 appointment:

28 Name of Nominee for Guardian of my Estate:

29 _____
 30 Nominee's Address:

31 _____
 32 Nominee's Telephone Number:

33 _____
 34 Name of Nominee for Guardian of my Person:

35 _____
 36 Nominee's Address:

37 _____
 38 Nominee's Telephone Number:

39 _____
 40 **RELIANCE ON THIS POWER OF ATTORNEY**

41 Any person, including my agent, may rely upon the validity of this
 42 power of attorney or a copy of it unless that person knows it has



terminated or is invalid.

SIGNATURE AND ACKNOWLEDGMENT

Your Signature

Date

Your Name Printed

Your Address

Your Telephone Number

State of

County of

This document was acknowledged before me on

_____,

(Date)

by _____.

(Name of Principal)

(Seal, if any)

Signature of Notary

My commission expires: _____

This document prepared by:

IMPORTANT INFORMATION FOR AGENT

Agent's Duties

When you accept the authority granted under this power of attorney, a special legal relationship is created between you and the principal. This relationship imposes upon you legal duties that continue until you resign or the power of attorney is terminated or revoked. You must:

- (1) do what you know the principal reasonably expects you to do with the principal's property or, if you do not know the principal's expectations, act in the principal's best interest;
- (2) act in good faith;
- (3) do nothing beyond the authority granted in this power of attorney; and
- (4) disclose your identity as an agent whenever you act for the principal by writing or printing the name of the principal and signing your own name as "agent" in the following manner:



(Principal's Name) by (Your Signature) as Agent

Unless the Special Instructions in this power of attorney state otherwise, you must also:

- (1) act loyally for the principal's benefit;**
- (2) avoid conflicts that would impair your ability to act in the principal's best interest;**
- (3) act with care, competence, and diligence;**
- (4) keep a record of all receipts, disbursements, and transactions made on behalf of the principal;**
- (5) cooperate with any person that has authority to make health care decisions for the principal to do what you know the principal reasonably expects or, if you do not know the principal's expectations, to act in the principal's best interest; and**
- (6) attempt to preserve the principal's estate plan if you know the plan and preserving the plan is consistent with the principal's best interest.**

Termination of Agent's Authority

You must stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. Events that terminate a power of attorney or your authority to act under a power of attorney include:

- (1) the death of the principal;**
- (2) the principal's revocation of the power of attorney or your authority;**
- (3) the occurrence of a termination event stated in the power of attorney;**
- (4) accomplishment of the purpose of the power of attorney; or**
- (5) if you are married to the principal, the filing of a legal action with a court to end your marriage, or for your legal separation, unless the Special Instructions in this power of attorney state that such an action will not terminate your authority.**

Liability of Agent

The meaning of the authority granted to you is defined in the Uniform Power of Attorney Act, IC 30-6. If you violate the Uniform Power of Attorney Act (IC 30-6) or act outside the authority granted, you may be liable for any damages caused by your violation.

If there is anything about this document or your duties that you do not understand, you should seek legal advice.

**C
o
p
y**



1 **Sec. 2. The following optional form may be used by an agent to**
 2 **certify facts concerning a power of attorney.**

3 **AGENT'S CERTIFICATION AS TO THE VALIDITY OF**
 4 **POWER OF ATTORNEY AND AGENT'S AUTHORITY**

5 State of _____

6 County of _____

7 I, _____ (Name of Agent),
 8 certify under penalty of perjury that _____ (Name
 9 of Principal) granted me authority as an agent or successor agent
 10 in a power of attorney dated _____.

11 I further certify that to my knowledge:

- 12 (1) the Principal is alive and has not revoked the power of
 13 attorney or my authority to act under the power of attorney,
 14 and the power of attorney and my authority to act under the
 15 power of attorney have not terminated;
 16 (2) if the power of attorney was drafted to become effective upon
 17 the happening of an event or contingency, the event or
 18 contingency has occurred;
 19 (3) if I was named as a successor agent, the prior agent is no
 20 longer able or willing to serve; and

21 (4) _____
 22 _____
 23 _____
 24 _____
 25 _____
 26 _____

27 (Insert other relevant statements)

28 **SIGNATURE AND ACKNOWLEDGMENT**

29 _____
 30 **Agent's Signature**

Date

31 _____
 32 **Agent's Name Printed**

33 _____
 34 **Agent's Address**

35 _____
 36 **Agent's Telephone Number**

37 **This document was acknowledged before me on**

38 _____,

39 (Date)

40 by _____.

41 (Name of Agent)

C
O
P
Y



(Seal, if any)

Signature of Notary

My commission expires: _____

This document prepared by: _____

SECTION 19. IC 34-30-2-132.8, AS ADDED BY P.L.238-2005, SECTION 61, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 132.8. ~~IC 30-5-8-7~~ **IC 30-6-3-16** (Concerning a person who relies on a power of attorney or an affidavit concerning a power of attorney).

SECTION 20. IC 35-42-1-2.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2.5. (a) This section does not apply to the following:

(1) A licensed health care provider who administers, prescribes, or dispenses medications or procedures to relieve a person's pain or discomfort, even if the medication or procedure may hasten or increase the risk of death, unless such medications or procedures are intended to cause death.

(2) The withholding or withdrawing of medical treatment or life-prolonging procedures by a licensed health care provider, including pursuant to IC 16-36-4 (living wills and life-prolonging procedures) **or** IC 16-36-1 (health care consent). ~~or IC 30-5 (power of attorney).~~

(b) A person who has knowledge that another person intends to commit or attempt to commit suicide and who intentionally does either of the following commits assisting suicide, a Class C felony:

(1) Provides the physical means by which the other person attempts or commits suicide.

(2) Participates in a physical act by which the other person attempts or commits suicide.

SECTION 21. IC 30-5 IS REPEALED [EFFECTIVE JULY 1, 2008].

C
O
P
Y

